

## Division of Labor Statistics and Research

### INITIAL STATEMENT OF REASONS

#### Problem Addressed:

Pursuant to Labor Code Section 6410, the Division of Labor Statistics and Research (DLSR), a division within the Department of Industrial Relations, is charged with prescribing and providing the forms necessary for maintenance of records of occupational injuries and illnesses required by the United States Department of Labor under the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). Requirements for fulfilling this mandate are currently found in Article 2 of Subchapter 1, Chapter 7, Division 1 of Title 8 in the California Code of Regulations ("Article 2").

On July 1, 2002, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated revisions to regulations at 29 CFR 1904 addressing Occupational Injury and Illness Recording and Reporting Requirements. The changes included recording criteria and instructions for occupational hearing loss and musculoskeletal disorders (MSDs) as well as the introduction of a hearing loss column on the Form 300. See Federal Register Volume 67, No. 126, pages 44037-44038, and 44124-44127. OSHA then delayed the implementation of the hearing loss column and MSD instructions on December 17, 2002 until January 1, 2004. See Federal Register Volume 67 pages 77165-77170. OSHA subsequently withdrew references pertaining to musculoskeletal disorders on June 30, 2003 that appeared in 29 CFR 1904.12 and 29 CFR 1904.29. These included instructions for recording MSD cases and the statement that MSD cases are not privacy concern cases. This revision did not change the implementation date of the hearing loss column. See Federal Register volume 68 pages 38601- 38607. The State of California, through DLSR, is now required by the provisions of 29 CFR 1902.3(k), 29 CFR 1952.4, and 29 CFR 1956.10(i), to adopt regulations for recording occupational injuries and illnesses that are substantially identical to the requirements of revised 29 CFR 1904.10 Hearing Loss, 29 CFR 1904.12 Musculoskeletal Disorders, and 29 CFR 1904.29 Forms, subpart (b)(7)(vi).

#### Specific Purpose of Adoption/Factual Basis:

To implement the use of recording criteria consistent with the Federal OSHA requirement for recording cases of occupational hearing loss, and to maintain a consistent approach for recording musculoskeletal disorders on the pertinent recording and reporting forms. The Division proposes to amend subsections 14300.10, 14300.12, 14300.29, Cal/OSHA Forms 300 and 300A, and Appendices D and E as described below.

#### Amended subsection 14300.10, Appendix D and Appendix E: Purpose.

This proposed amendment establishes the criteria that employers use to report and record the occurrence of an employee's occupational hearing loss. These criteria replace the existing criteria in that section with significant changes in defining the magnitude of the loss that is recordable. The proposed amendment includes the requirement in subpart 10(b)(7) to record hearing loss cases on the Cal/OSHA Form 300 in a specific column in keeping with the Federal OSHA Form 300. The proposal also would modify the Cal/OSHA Form 300A to include a space to record hearing loss cases to be consistent with the OSHA Form 300A. In

a similar manner, the proposal would amend Appendix D and E to include instructions to have a column and space for parties who wish to produce an equivalent form to the Cal/OSHA Form 300 and Form 300A respectively. The new criteria would go into effect on January 1, 2004.

This change is necessary for adopting criteria that are substantially identical to the Federal regulation as required by Federal OSHA in 29 CFR 1902.3(k), 29 CFR 1952.4, and 29 CFR 1956.10(i)

Amended subsection 14300.12: Purpose.

OSHA announced on June 30, 2003 that it has withdrawn final “recording criteria for cases involving work-related musculoskeletal disorders” (MSDs). Federal OSHA had planned to implement the use of specific criteria for recording MSDs beginning on January 1, 2003, but delayed the implementation to January 1, 2004. The proposed amendment to subsection 14300.12 deletes references to the interim period but retains the instruction for recording injuries and illnesses of this nature. This change is necessary to maintain a recording procedure already in effect, that would be least disruptive to California employers while maintaining a process that is consistent with OSHA’s procedures.

Amended subsection 14300.29 (7)(F): Purpose

OSHA’s withdrawal of the MSD recording requirements included the deletion of the statement: “Musculoskeletal disorders (MSDs) are not considered privacy concern cases.” The proposed amendment to subsection 14300.29 (7)(F) would delete this sentence and the reference to it in the Note.

This change is necessary for adopting criteria that are substantially identical to the Federal regulation as required by Federal OSHA in 29 CFR 1902.3(k), 29 CFR 1952.4, and 29 CFR 1956.10(i)

Specific Technology or Equipment: This proposal will not mandate the use of specific technologies or equipment.

Identified Alternatives that Would Lessen Adverse Impact on Small Businesses: No alternatives would lessen economic impact. No adverse impact on small businesses is anticipated from the implementation of the proposed regulation. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

Underlying Data: None.

Business Impact: This regulation will not have a significant adverse economic impact on businesses.

Documents relied upon:

Federal Register /Volume 67, Number 126/ Monday July 1, 2002/Proposed Rules 44037-44048 & 44124-44127.

Federal Register Volume 68 June 30, 2003 Occupational Injury and Illness Recording and Reporting Requirements 38601-38607.